In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1473

VICENTE VILLAMOSA NAZARENO, ET AL., PETITIONERS

v.

EDWARD H. LEVI, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 512 F. 2d 936. The memorandum and order of the district court (Pet. App. 12a-16a) is reported at 366 F. Supp. 1219.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 1975. The petition for a writ of certiorari was filed on May 23, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

8 U.S.C. 1153 (a)(1) provides in pertinent part:

> Aliens who are subject to the numerical limitations * * * of this title shall be allotted visas * * * as follows:
>
> (1) Visas shall be first made available * * * to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

8 U.S.C. 1101(b)(1)(E) provides in pertinent part:

> (1) The term "child" means an unmarried person under twenty-one years of age who is—
>
> * * * * *
>
> (E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years * * * .

8 U.S.C. 1101(b)(2) provides:

> (2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection.

QUESTION PRESENTED

Whether the Board of Immigration Appeals properly concluded that the terms "sons or daughters," as used in 8 U.S.C. 1153(a)(1) of the Immigration and Nationality Act, does not include an adopted person who is excluded from the definition of "child" in 8 U.S.C. 1101(b)(1)(E) of the Act.

STATEMENT

Petitioners Fe Nazareno and Enrique Templora Targa, adult citizens of the Philippines, sought to secure immigrant visas through adoption by American citizens. Fe Nazareno was adopted by petitioners Vicente Villamosa Nazareno and Trinidad Miguelino Nazareno on April 1, 1971, when she was 31 years old. Enrique Templora Targa was adopted by petitioner Marie Louise Shelton on June 29, 1972, when he was 32 years old. The adoptive parents then filed petitions with the Immigration and Naturalization Service requesting first preference classifications for immigrant visas for Fe and Enrique under 8 U.S.C. 1153(a)(1).[1]

The petitions were denied by district directors of the Immigration and Naturalization Service. On appeal, the Board of Immigration Appeals affirmed, holding that one who could not have qualified as an adopted child under Section 1101(b)(1)(E) before reaching the age of 21 could not thereafter qualify for a first preference as an adult son or daughter under Section 1153(a)(1). Since petitioners were adopted long after their twenty-first birthdays, they were found not qualified.

Petitioners then filed a complaint in the United States District Court for the District of Columbia seeking a declaratory judgment. The court granted the government's motion for summary judgment and dismissed the complaint. The court of appeals affirmed in a comprehensive opinion on which we rely (Pet. App. 1a-11a).

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[1] 8 U.S.C. 1153(a)(1) constitutes the highest priority preference and is available to otherwise "qualified immigrants who are the unmarried sons or daughters of citizens of the United States." This so-called "first preference" is primarily useful for adult unmarried sons and daughters of American citizens because, under Section 1151(a) and (b) of the Act, offsprings under the age of twenty-one and who otherwise meet the definition of "child" in Section 1101(b)(1) may be admitted without regard to quota limitations.

ARGUMENT

Petitioners claim that the Board of Immigration Appeals erroneously construed the terms "sons or daughters" under Section 1153(a)(1) of the Immigration and Nationality Act. While the Act does not provide an explicit definition of the terms, the Board's construction—that one may not be considered an adult son or daughter under Section 1153(a)(1) of the Act unless he or she previously could have qualified as a "child" under Section 1101(b)(1)(E)—was reasonable and consonant with the overall purpose of the statute and its legislative history.

1. The Board's interpretation harmonizes the undefined terms "sons or daughters" with the explicit statutory definition of "child" in Section 1101(b)(1). As the court of appeals stated: "The specificity of Congress in excluding a person adopted over the age of 14 from the category of "child" may be taken * * * as a likely legislative direction that such person would be excluded [also] from the category of 'son'" (Pet. App. 7a). Such a reading of the statute "avoids the curious situation in which a person who was never capable of being a 'child' of his or her parents may nonetheless be their 'son' or 'daughter'" (*id.* at 9a). The Board's interpretation also is consistent with the statutory definition of "parent." Under 8 U.S.C. 1101(b)(2), a person is considered a parent only if his or her offspring is a "child" as that term is defined in Section 1101(b)(1).

Moreover, the construction placed upon the Act by the Board serves to preserve the integrity of the immigration system. As the court of appeals stated (Pet. App. 10a):

> [T]he Board's limitation on preferences open to persons adopted after age 14 avoids the use of adoption as a fraudulent means of gaining improved immigration status, especially since many such adoptions, and certainly adult adoptions, do not result in either legal obligations or a living relationship among the parties * * *.

2. The legislative history of the Immigration and Nationality Act does not suggest a contrary conclusion from that reached by the Board. The original 1952 Act did not define "son" or "daughter," nor did it provide for adopted individuals in its definition of "child" in Section 1101(b)(1). See 66 Stat. 171. In an early decision, the Board of Immigration Appeals held that an alien adult adopted at age 24 could receive a preference as an adult "son" within the meaning of the statute even though he could not have obtained the nonquota status of a "child" before reaching the age of 21. See *Matter of R*, 5 I. & N. Dec. 438. In 1957, the Act was amended to provide the current definition of adopted child found in Section 1101(b)(1)(E). See 71 Stat. 639. In 1959, the Act was again amended, by improving the preference status for sons and daughters.[2] However, at the same time, an amendment was added that limited the preferences accorded such sons and daughters to those who could have qualified as "child[ren]" under Section 1101(b)(1). See 73 Stat. 645, 8 U.S.C. (1964 ed.) 1155(b).[3] This amendment overruled the Board's previous position in *Matter of R*. See Pet. App. 5a.

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[2]Under the original 1952 Act, unmarried sons or daughters of American citizens enjoyed only a fourth preference. Under the 1959 amendment, they were granted a second priority preference, and with the 1965 amendments to the Act, they were accorded a first preference.

[3]The amendment read:

> No petition for quota immigrant status or a preference in behalf of a son or daughter under paragraphs (2), (3), or (4) of section 203(a) [8 U.S.C. (1964 ed.) 1153(a)] of the Immigration and Nationality Act shall be approved by the Attorney General unless the petitioner establishes that he is a parent as defined in section 101(b)(2) [8 U.S.C. (1964 ed.) 1101 (b) (2)] of the Immigration and Nationality Act of the alien in respect to whom the petition is made.

In 1965, the Act was again revised. The portion of the 1965 amendments restructuring the preference classifications omitted the section, added in 1959, which defined sons and daughters in terms of a parent-child relationship. As the court of appeals observed, however, it was not likely that Congress intended by this unexplained omission to broaden the definition of "sons or daughters." See Pet. App. 8a, n. 17. Particularly is this so in light of the fact that under the new enactment a parent still is defined in Section 1101(b)(2) as one whose offspring was a "child" as defined in Section 1101(b)(1). Subsequent to 1965, the Board of Immigration Appeals consistently has held that the omission of the 1959 amendment in 1965 did not reflect a change of congressional purpose. See *Matter of Caramanzana*, 12 I. & N. Dec. 47; see also 1 Gordon and Rosenfield, *Immigration Law and Procedure*, §2.27b, pp. 2-120 to 2-121 (1975).

3. In view of this legislative history, the Board's construction of the term "sons or daughters" is reasonable. Accordingly, the court of appeals showed "great deference to the interpretation given * * * the statute by the officers or agency charged with its administration" (*Udall* v. *Tallman*, 380 U.S. 1, 16), and sustained the Board's interpretation because it was "reasonable and not contrary to the discernible intent of Congress * * *." (Pet. App. 8a-9a.)

Petitioners claim that this rule of statutory construction should not apply to the interpretation of "sons or daughters" in the Immigration and Nationality Act because these terms are not ambiguous. However, as the court of appeals explained (Pet. App. 7a), an ambiguity arises here "from

the absence of explicit legislative history as to the purpose of the deletion" of the 1959 definition.[4]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1975.

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[4]Nor is the decision below contrary to *Woodward* v. *United States*, 341 U.S. 112; *Carpenter* v. *United States*, 168 F.2d 369 (C.A. 3); or *Baskin* v. *Montedonico*, 115 F.2d 837 (C.A. 6), as petitioners claim. *Woodward* and *Carpenter* held that a family relative by adoption was an eligible beneficiary under the terms of the National Service Life Insurance Act (54 Stat. 1008, 1010). The decisions in those cases thus turned on the specific language, purpose and legislative history of that Act, which is different from the Immigration and Nationality Act at issue here. *Baskin* involved the unrelated question whether a federal court sitting in Tennessee erred by declining to give full faith and credit to the judgment of a Florida state court.